

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

KENNETH ROHRBOUGH,

Plaintiff,

vs.

LUTHER HALL, et al.,

Defendants.

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Case No. 4:07CV00996 ERW

**MEMORANDUM AND ORDER**

This matter comes before the Court on the Court's in camera review of documents.

Pursuant to the Court's Memorandum and Order dated August 29, 2008, Defendants submitted to the Court a proposed protective order, the Internal Affairs card files for all officers present at the scene, and information regarding all citizen complaints and investigations between 9/3/99 and 9/3/02 that related to allegations of the excessive use of force, police brutality, abusive conduct, assault or battery.

Plaintiff has filed claims against the St. Louis Board of Police Commissioners alleging a policy or practice of failing to train, instruct, supervise, control and discipline police officers. To pursue these claims, Plaintiff asked that Defendants disclose certain Internal Affairs documents. In response, the Government has objected to the disclosure of these documents on the basis of executive privilege.

This privilege is a governmental privilege and it should only be invoked in extreme circumstances. *See Brown v. Thompson*, 430 F.2d 1214 (5th Cir. 1970). The general rule is that "a plaintiff alleging misconduct by police officers and a municipal policy condoning such alleged misconduct is entitled to discovery of the internal affairs investigations conducted by the police

department regarding the incident of which he complains and regarding other similar incidents involving the police department or the individual police officers about whom plaintiff complains.”

To determine whether documents should be disclosed, the Court engages in a balancing test weighing, “the public interest in nondisclosure against the need of the particular litigant for access to the privileged information.” *Hemstreet v. Duncan*, 2007 WL 4287602, at \*2 (D. Or. Dec. 4, 2007) ( *quoting Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1341 (D.C. Cir. 1984)). When the documents sought “are ‘both relevant and essential’ to the presentation of the case on the merits, ‘the need for disclosure outweighs the need for secrecy,’ and the privilege is overcome.” *Hemstreet*, 2007 WL 4287602, at \*2 ( *quoting In re Search of Premises Known as 1182 Nassau Averill Park Road*, 203 F.Supp.2d 139, 140 (N.D.N.Y. 2002)).

Ten factors are generally relied upon by courts when deciding whether internal affairs documents are protected by this privilege;

(1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the investigation has been completed; (7) whether any interdepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff’s suit is nonfrivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff’s case.

*Hemstreet*, 2007 WL 4287602, at \*2 ( *citing Frankenhauser v. Rizzo*, 59 FRD 339, 344 (E.D. Pa 1973)). The Court has considered these factors, and finds that disclosure is appropriate. To alleviate the Court’s concerns regarding the first and second factors, the Court will order Defendants to redact certain information. Defendants must redact the names and personal contact information of all private citizens in these Internal Affairs documents. Defendants shall not redact

the names of any police officers mentioned in these Internal Affairs documents, but shall redact any police officer's personal contact information that is contained in these documents. Personal contact information includes addresses, social security numbers, date of birth, family information and telephone numbers.

Plaintiff's suit has been brought in good faith and this information is both important and relevant to Plaintiff's claims. Accordingly, Defendants must disclose the following IAD reports:

99/326	99/332	99/347	99/348	99/350	99/351	99/352	99/389	99/390	99/395	99/404	99/416	99/430
99/432	99/433	00/004	00/011	00/027	00/029	00/030	00/039	00/049	00/061	00/076	00/086	00/095
00/097	00/102	00/108	00/111	00/133	00/134	00/135	00/147	00/165	00/168	00/169	00/170	00/178
00/182	00/183	00/190	00/202	00/210	00/222	00/223	00/241	00/244	00/249	00/250	00/266	00/290
00/304	00/305	00/322	00/340	01/008	01/009	01/021	01/031	01/033	01/037	01/038	01/055	01/063
01/065	01/067	01/079	01/080	01/083	01/089	01/091	01/129	01/132	01/151	01/155	01/158	01/159
01/163	01/167	01/180	01/181	01/192	01/197	01/204	01/218	01/240	01/253	01/269	01/273	01/300
01/301	02/004	02/005	02/006	02/038	02/063	02/068	02/070	02/079	02/081	02/082	02/120	02/136
02/101	02/118	02/120	02/137	02/139	02/140	05/231						

Additionally, Defendants must disclose the following items from the card files of those officers present at the scene; Ronald Mueller, IAD # 06/067 and Luther Hall, IAD #97/115.

Accordingly,

**IT IS HEREBY ORDERED** that Defendants must disclose the above listed documents to Plaintiff's counsel on or before **September 23, 2008.** Plaintiff's response to Defendants' Motion for Summary Judgment must be submitted on or before **September 30, 2008.** Defendants' Reply must be submitted on or before **October 6, 2008.** Trial remains set on a 3-week docket beginning **November 3, 2008.** These deadlines may hinder the Court's ability to rule the pending Motion for Summary Judgment prior to the Parties' deadline to file pretrial compliance, which is **October 14, 2008.**


**IT IS FURTHER ORDERED** that the following Protective Order shall be imposed on the documents disclosed pursuant to this order:

1. As used in this order, CONFIDENTIAL MATERIAL shall mean and refer to all Internal Affairs Division records and personnel records produced to Plaintiff's counsel pursuant to this Memorandum and Order.
2. All CONFIDENTIAL MATERIAL shall be retained only in the custody of the respective counsel of record, who shall be responsible for restricting disclosure in accordance with the provisions of this Memorandum and Order. Specifically, counsel shall retain all CONFIDENTIAL MATERIAL within the confines of his or her personal offices except as is necessary to conduct the present litigation.
3. All CONFIDENTIAL MATERIAL and the facts and information in the CONFIDENTIAL MATERIAL shall not be disclosed to any person except as provided below.
4. All CONFIDENTIAL MATERIAL shall be designated as CONFIDENTIAL MATERIAL by marking the word "CONFIDENTIAL" or some similar phrase on the face of the documents.
5. Access to CONFIDENTIAL MATERIAL shall be limited to Plaintiff, counsel of record for the respective parties to this action, regular employees and law clerks of said counsel who are assisting in the prosecution of this litigation, expert witnesses identified by Plaintiff or Defendant, consulting experts, and appropriate court personnel in the regular course of litigation.
6. The CONFIDENTIAL MATERIAL may not be disclosed to the Plaintiff and other persons other than counsel of record unless accompanied by a copy of this Protective

Order. Additionally, counsel must inform said person(s) of the terms of this Protective Order, and said person(s) must agree to be bound by its terms.

7. If it becomes necessary to submit CONFIDENTIAL MATERIAL to the Court in connection with any filings or proceedings in this litigation, the party using it shall file such CONFIDENTIAL MATERIAL under seal.
8. Nothing in this Memorandum and Order shall be construed to restrict the use or disclosure of any documents which a party or non-party shall have acquired from independent sources.
9. Upon final conclusion of this action, counsel to whom the CONFIDENTIAL MATERIAL has been disclosed shall return such CONFIDENTIAL MATERIAL (along with all copies thereof, and all other papers containing such CONFIDENTIAL MATERIAL) to the party which produced it, or take measures to destroy copies of said CONFIDENTIAL MATERIAL.
10. This Protective Order may be modified or amended by agreement of the parties or upon further Order of the Court.

Dated this 18th Day of September, 2008.

  
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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE